IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Babu Lal Vs. State of Raj.
(D.B. Criminal Appeal No.764/2000)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 25-11-2000 in Sessions Case No.4/1999 passed by Shri Vinay Kumar Chawla, RHJS, Additional Sessions Judge Behror, District Alwar.

Date of Judgment: July 18, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE SANGEET LODHA

Mr. Virendra Singh Yadav, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Babu Lal, appellant herein, was put to trial for committing murder of his own father before learned Additional Sessions Judge Behror District Alwar, who vide judgment dated November 25, 2000 convicted and sentenced him under section 302 IPC to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer three months imprisonment.

2. It is the prosecution case that on October 15, 1998 informant Gheesa Ram (Pw.1) submitted a written report (Ex.P-1) at Police Station Mandan stating therein that on the said day his son Sarjeet and grand son Babu Lal had hot exchanges in connection with sale of millet, thereupon Babu Lal inflicted a knife blow on the person of Sarjeet, who was removed

to hospital where he was declared dead. On that report a case under sections 302 IPC was registered and investigation commenced. Necessary memos were drawn, statements of witnesses were recorded, appellant was arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge Behror District Alwar. Charge under section 302 IPC was framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as may as 13 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. Three witnesses in support of his defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated above.

3. Death of deceased Sarjeet concededly was homicidal in nature. As per Post Mortem Report (Ex.P-8) following antemortem injuries were found on the dead body:-

1. Stab injury 2.5cm x ¾ cm x cavity deep between left intercostal space antro laterally directed inwards
2. Abrasion 2cm x ½ cm on left arm inner side near armpit.

In the opinion of Dr. Veer Singh Yadav (Pw.6) the cause of death was cardiac failure as a result of damage to heart.

4. Learned counsel for the appellant criticised the impugned judgment from various angles and urged that since informant Gheesa Ram (Pw.1) did not support the prosecution case, the charge under section 302 IPC could not be established beyond reasonable doubt. It is ultimately contended that the incident appeared to have been occurred all of sudden and without any premeditation, Exception 4 to Section 300 IPC ought to have

been invoked.

5. Per contra, learned Public Prosecutor supported the finding of learned trial Judge and urged that appellant was rightly convicted and sentenced.

6. In order to appreciate the submission of learned counsel for the appellant we notice that to invoke Exception 4 of Section 300 IPC four requirements must be satisfied:-

(i) it was a sudden fight;
(ii) there was no premeditation;
(iii) the act was done in the heat of passion; and
(iv) the assailant had not taken any undue advantage or acted in a cruel manner.

7. In Hari Ram Vs. State of Haryana (1983)1 SCC 193 and Krishna Tiwari Vs. State of Bihar JT 2001(3) SC 331, Hon'ble Supreme Court indicated that where the accused, who after getting provoked came with sharp edged weapon and got the same thrusted on the chest of the deceased, was not guilty under section 302 but liable to be convicted under section 304 IPC.

8. In the instant case all the ingredients of Exception 4 to Section 300 IPC are found present. The deceased and appellant were father and son and after hot exchanges in regard to sale of millet, the appellant in a fit of anger inflicted a knife blow. The act of appellant appears to us sudden and unpremeditated. Because of the hot exchanges the appellant appears to have lost his temper and committed crime. The appellant did not take undue

advantage of the situation. Taking an overall view of the situation the appellant is held guilty of committing offence of culpable homicide not amounting to murder punishable under Section 304 Part I IPC.

9. For the reasons aforementioned, we partly allow the appeal of appellant Babu Lal and instead of section 302 we convict him under section 304 part I IPC and sentence him to suffer rigorous imprisonment for ten years and fine of Rs.1000/-, in default to further suffer one month rigorous imprisonment.

The impugned judgment of trial court stands modified as indicated above.

(Sangeet Lodha),J. (Shiv Kumar Sharma)J.

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